उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.1790/2000

APPELLANTS 1. Dayawati, widow of Konda alias Vishwanath Gond, aged 50 years.
2. Dukalha alias Bhuru, son of Vishwanath Gond, aged 22 years.
Both residents of Village Mohbhatta, P.S. Bhatapara (Rural), District Raipur (M.P.)

Vs

RESPONDENT State of M.P. through the Police Station, Bhatapara (Rural), District Raipur (M.P.)

Present:

Miss Sangeeta Mishra, Advocate for the appellants.

Mr. N.K. Mehta, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(30th August, 2007)

Per Dhirendra Mishra, J:

Heard.

This appeal under Section 374 (2) of Cr.P.C. is directed against the judgment of conviction and order of sentence dated 21st January, 1999 passed in Sessions Trial No.158/95 whereby learned 1st Additional Sessions Judge, Baloda Bazar, District Raipur has convicted the appellants under Section 306/34 of the IPC and sentenced each of

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them to undergo R.I. for 10 years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 1 month.

The case of the prosecution, in brief, is that deceased Sukhbai was married to appellant No.2-Dukalha some 1½ years before the date of incident i.e. 5.5.1994 when Sukhbai committed suicide by setting herself ablaze after pouring kerosene on her body. Appellant No.1 is the mother-in-law of the deceased. It is alleged that the appellants used to torture the deceased, did not provide her meals and even she was not allowed to live and sleep with her husband. She was taken to Bhatapara hospital on the date of incident, however, when they reached hospital Sukhbai was already dead. Dr. Vasudeo Thakur (PW-1) vide Ex.P-1 gave information regarding death of Sukhbai to the Station House Officer, Police Station Bhatapara and on the basis of that information, merg intimation of Ex.P-3 was recorded. Dr. Vasudeo Thakur (PW-1) & Dr. R.S. Tiwari (PW-4) conducted postmortem on the body of deceased and submitted the report of Ex.P-2.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur and after committal the same was received by learned Additional Sessions Judge, who framed the charge under Section 306 of the IPC against the appellants. During trial 16 witnesses have been examined and thereafter the statement of accused persons was recorded under

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Section 313 of Cr.P.C. wherein they have denied the circumstances appearing against them and pleaded innocence & false implication. However, learned Additional Sessions Judge convicted and sentenced the appellants as mentioned herein above.

Dr. Vasudeo Thakur (PW-1) & Dr. R.S. Tiwari (PW-4) have conducted postmortem and prepared the postmortem report of Ex.P-2 wherein they have mentioned that deceased Sukhbai sustained 95% burn injuries and cause of her death was shock as a result of excessive burn injuries. However, no opinion has been given regarding nature of death.

Conviction of the appellants is based on the circumstantial evidence and the circumstances relied upon by the trial court are that the marriage of deceased was solemnized with the appellant No.2 before $1\frac{1}{2}$ years of the incident; the circumstances under which the body was found and particularly burn cot, burn clothes etc were found and there is no smell of kerosene emanating from the dead body and deceased did not sustain any burn injury over her fingers. All the above circumstances have been taken to be a circumstance that the deceased was in fact set on fire while she was sleeping and therefore, her death is not accidental and with these observations the learned trial court has drawn a presumption of abetment of suicide under Section 113 (A)

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of the Evidence Act and accordingly convicted the appellants under Section 306 of the IPC by the impugned judgment.

Learned counsel for the appellants submits that there is no evidence available on record to establish that the appellants' abetted the deceased to commit suicide, as there is no evidence available on record to show that the appellants treated the deceased with cruelty as a result of which she committed suicide. Therefore, the presumption drawn by the trial court is without any foundation and the same deserves to be set aside.

On the other hand, learned Panel Lawyer for the State supported the impugned judgment.

I have heard learned counsel for the parties and perused the evidence available on record including the impugned judgment.

The deceased died as a result of burn injuries is not in dispute. The prosecution examined Shyamratan (PW-5), Barsan (PW-6), Lekhuram (PW-7) & Lakhan Lal Verma (PW-8) and from perusal of the statement of these witnesses it is evident that none of these witnesses have supported the case of the prosecution. They have been cross-examined by the prosecution after being declared hostile but even in their cross-examination the prosecution has not been able to adduce any evidence of abetment. On the contrary, the above witnesses have categorically stated that the deceased had cordial relations with her

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आदेश पत्रक (पूर्वानुबद्ध)

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	in-laws and there was no complaint of any torture or any quarrel between them. The trial court has also observed this in the impugned judgment, however, relying upon the circumstances, which have been mentioned in the foregoing paragraphs of this judgment, and thereby drawing presumption under Section 113 (A) of the Evidence Act, the appellants have been convicted under Section 306 of the IPC and sentenced, as mentioned above. The above judgment of the trial court is perverse, the presumption drawn by the trial court under Section 113(A) of the Evidence Act that the appellants abetted the deceased to commit suicide is without any basis and the same is contrary to the law, therefore, the same cannot be sustained. In the result, the appeal preferred by the appellants deserved to be allowed and the same is allowed. Conviction of the appellants under Section 306 of the IPC and sentence imposed under that section is hereby set aside. The appellant be set at liberty forthwith, if not required in any other case. **Sd/-** **Dhirendra Mishra** **Judge**	

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